



4800 Ashford Dunwoody Road
 Dunwoody, Georgia 30338
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MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: August 26, 2019

Subject: **SECOND READ: Ordinance Amending Chapter 26 of the City of Dunwoody Code of Ordinances by Revising Underground Utility Marking Regulations**

BACKGROUND

At its July 29th and August 12th meetings, the City Council discussed enacting utility marking regulations as outlined in the attached draft ordinance. The process for locating and marking utilities for protection prior to excavation is outlined in the state law known as The Georgia Utility Facility Protection Act. The act requires 48-hour notice, except in the case of emergency, to the Utility Protection Center, prior to excavating, so that utility companies can mark their facilities in the vicinity of the work. The notice is effective for 21 days at which point additional notice must be given if the excavating is not completed. Utilities and utility locator services are required by law to mark the location of utilities using staking, flagging, permanent marker or other marking in accordance with the American Public Works Association (APWA) color code and Public Service Commission regulations. In cases where the excavation area cannot be described with sufficient specificity, the state law requires the excavation area to be identified using white paint, stakes or flags. This is a procedure commonly referred to as white lining.

DISCUSSION OF UTILITY MARKING ORDINANCE

The draft ordinance previously presented to the council would make white lining a requirement for all excavations on city right-of-way, with the intent being to limit the area of utility marking only to what is required for the excavation. Excavators would also be required to remove all markings at the completion of a project involving excavation.

The City Council has discussed several difficulties with enforcing the ordinance. Because white lining and removing markings at the end of construction are not common industry practices, it would be necessary for city staff to regularly visit construction sites to confirm that white lining is occurring and perform site inspections at the end of construction to verify that markings are removed. On average, about 4 utility locates per day are requested within the City of Dunwoody. In addition to staffing, the white lining compliance would also be complicated by the fact that the city would not always have prior notice of when the utility marking is occurring.



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A third difficulty with ensuring compliance is that state law prohibits enforcement of penalties for violation of local utility marking ordinances. Therefore, the only enforcement power available to the city would be in cases where the utility marking is associated with activity that also requires a separate city permit.

In summary, additional staff resources would be needed to maximize the effectiveness of the code requirements outlined in Section 26-37 and Section 26-39 of the attached ordinance. Even with adequate staffing, there would be some instances of residual paint markings where the city would have no power to enforce compliance. The requirements in Section 26-36 and Section 26-38 serve to codify practices that are already occurring and would not require additional resources.

REVIEW OF OTHER LOCAL ORDINANCES

Some local governments in Georgia have ordinances that refer to utility marking practices. Fayette County and the cities of Tyrone and Peachtree City require white lining and provide standards for how the utilities should be marked. However, the marking standards are already regulated by the state.

The City of Atlanta requires removal of utility markings in the right-of-way only when the markings are associated with utility construction or repairs.

The City of Thomasville requires white lining prior to construction of underground facilities but, because the city is the operator of all of the utilities, the personnel performing the utility marking and the utilities are under the city's direct control.

Other cities, such as Sandy Springs, do not have a white lining ordinance but do include a requirement in utility permits to remove markings at the completion of the work covered by the utility permit.

RECOMMENDATION

Based on the city's limited powers and resources for enforcement of comprehensive utility marking regulations, staff recommends adoption of the proposed revisions to Chapter 26 of the city code of ordinances without the additions of Section 26-37 and 26-39. Additionally, staff recommends adding a condition to the city's utility permits that requires utility markings on sidewalks, paved paths and plazas in the city right-of-way to be removed at the completion of the work covered by the permit.

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2019-XX-XX

AN ORDINANCE AMENDING CHAPTER 26 OF THE CITY OF DUNWOODY CODE OF ORDINANCES BY REVISING EXCAVATION AND UTILITY REGULATIONS

WHEREAS, the City of Dunwoody is charged with protecting the health, safety and welfare of the citizens of the City; and

WHEREAS, the City of Dunwoody desires to update provisions of the City’s Code of Ordinances, Chapter 26 Streets, Sidewalks and Other Public Spaces Ordinance, and

WHEREAS, Chapter 26 is currently silent regarding the requirements for utility marking;

WHEREAS, in order to maintain the aesthetic quality and safety of public land;

NOW, THEREFORE, the Mayor and City Council of the City of Dunwoody hereby ordain as follows:

Section 1: Streets, Sidewalks and Other Public Spaces, Chapter 26 of the City of Dunwoody Code, Article II (Excavations), is hereby amended to read as follows:

Sec. 26-33. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Damage means any impact or exposure that results in the need to repair a facility or sewer lateral due to the weakening or the partial or complete destruction of the facility or sewer lateral including, but not limited to, the protective coating, structural or lateral support, cathodic protection, or the housing for the line, device, sewer lateral, or facility.

Demolish or demolition means any operation by which a structure or mass of material is wrecked, razed rendered, moved or removed by means of any tools, equipment or discharge of explosives.

Emergency means a sudden or unforeseen occurrence involving clear and imminent danger to life, health, or property; the interruption of utility services; or repairs to transportation facilities that require immediate action.

Excavate or excavation means an operation for the purpose of the movement or removal of earth, rock or other materials in or on the ground by use of mechanized equipment or by discharge of explosives including auguring, backfilling, digging, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling, but not including the tilling of soil for agricultural purposes. ~~the removal of earth, rock or other soil materials for the purpose of installing utility facilities, non-single-family residential building foundations, or other similar uses.~~

Extraordinary circumstances means circumstances other than normal operating conditions which exist and make it impractical or impossible for a facility owner or operator to comply with the provisions of this article. Such extraordinary circumstances may include hurricanes, tornadoes, floods, ice and snow and acts of God.

Mechanized equipment means equipment operated by means of mechanical power, including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills cable and pipe plows and other equipment used for plowing-in or pulling-in cable or pipe.

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2019-XX-XX

Operator means any person who owns, operates or controls the operation of a utility.

Person means any individual; any corporation, partnership, association or any other entity organized under the laws of any state; any subdivision or instrumentality of a state; and any employee, agent, or legal representative thereof.

Utility means any line, system or facility used or installed for use in providing electric or communications service, or in carrying, providing, or gathering gas, oil or oil products, sewage, waste water, storm drainage, or water or other liquids. The term utility may also be used to refer to the owner, operator, provider, servicer, or any agent thereof, of any above-described utility or utility facility.

White Lining means the procedure whereby an excavator uses white paint, white stakes and/or white flags to indicate the route or area that is going to be excavated, such that the locator then knows exactly how much marking is required and where. White lining reduces confusion about what utilities need to be marked or not marked.

Sec. 26-34. Applicability

This article applies to all excavations made for the purposes of land development, utility installations, ~~building~~ construction or similar activity within ~~public right of way~~ ~~the city~~.

Sec. 26-35. Federal and state regulations-Adopted

- (a) Any person making an excavation shall meet the requirements as set forth in the Federal Occupational Safety and Health Regulations for construction, as adopted April 17, 1971, and each amendment thereafter, with the exceptions and amendments included in this article.
- (b) The regulations of O.C.G.A. Title 25 Chapter 9 are incorporated by reference.

Sec. 26-36. ~~Excavations in public street or right-of-way-Permit required~~ ~~Same~~ ~~Amendments and exceptions.~~

- (a) Any person excavating within a public street or sidewalk or making utility repairs or installations on public right of way shall first obtain approval from the public works department. Allowances will be made for emergency conditions provided that such persons engaged in emergency excavation give, as soon as practicable, notice of the emergency excavation. Utilities shall also comply with the policy and procedures set forth in article IV of this chapter.
- (b) After work approved under this section has been completed, the affected party shall repair the pavement, or portion of rights-of-way, that has been encroached upon. Repair work shall be completed in accordance with city standards and to the public works department’s satisfaction.
- (c) The Department of Public Works shall be notified prior to backfilling excavations in the roadway and under sidewalks for the purpose of inspecting and monitoring the pavement repair.

~~The following amendments and exceptions shall apply to the development requirements adopted by section 26-35:~~

- (1) ~~Excavations involved in the construction of a basement or foundation for a single family residential structure are exempt from all of these requirements, with the exception that any excavation or foundation grading on which construction does not proceed within 30 days shall be fenced, so as to prevent general public entrance to the building site, or filled~~

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2019-XX-XX

~~in. However, an extension may be allowed if justified and if approved by application to the city.~~

- ~~(2) The administration and enforcement of the provisions of this article shall be the responsibility of the department having applicable jurisdiction over the type of work involved.~~
- ~~(3) Table P-2, the line reading "ten to 15 feet, likely to crack" and the column "Maximum Spacing, Vertical Feet," shall contain the number "4."~~

Sec. 26-37. White Lining

- ~~(a) Prior to contacting the utility protection center, the excavator shall use white lining practices to identify the proposed route or boundary of the proposed excavation. Electronic/virtual white lining is not an acceptable method.~~
- ~~(b) Exceptions to white lining requirement are as follows:

 - ~~(1) Unless one or more utility facilities are damaged five times or more collectively by a contractor making the locate request within a 90-day contract period, white lining will not be required for any large project as defined by the rules of the Georgia Public Service Commission. A large project ticket holder whose past prohibits it from being exempt, as stated above, will be subject to no more than a two-day shutdown period and shall be required to white line the remainder of the project to meet the large project facility locating agreement schedule that the ticket holder and utilities originally agreed upon;~~
 - ~~(2) Homeowners/occupants involved in excavation or land disturbance that is confined to a single address or parcel. Homeowners/occupants shall not submit locate requests for excavation or land disturbance that will be performed by a business, a contractor, or a utility. Businesses, contractors, and utilities are not exempt from white lining;~~
 - ~~(3) Emergencies and extraordinary circumstances as such terms are defined herein, are statutory exceptions to the requirement for obtaining a locate ticket prior to commencing excavation and, hence, also exceptions to the requirement for white lining under this section. However, if a particular emergency notification is later determined not to have been an emergency or an extraordinary circumstance, then the excavator's failure to procure a locate ticket before excavating will be treated as a violation of this section. Also, pre-excavation emergency locate ticket requests (that is, a request for a locate ticket on an expedited basis sooner than the prescribed time limit) will not be an exception to white lining as required in this section;~~
 - ~~(4) Residential telecommunications service drop lines that can be delineated by the route of the existing line on the ground for single residential address/parcel requests only; and~~
 - ~~(5) Termite baiting systems.~~~~

Sec. 26-38 Notice of damage to utility.

- ~~(a) Each person responsible for any excavation or demolition operation that results in any damage to an underground utility shall immediately upon discovery of such damage, notify the operator of such utility of the location and nature of the damage and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.~~
- ~~(b) Each person responsible for any excavation or demolition operation that results in damage to an underground utility permitting the escape or any flammable, toxic or corrosive gas or liquid shall, immediately upon discovery of such damage, notify the operator, police and fire departments and take any other action as may be reasonably necessary to protect~~

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2019-XX-XX

persons and property and to minimize the hazards until arrival of the operator's personnel or police and fire departments.

Sec. 26-39 Removal of utility markings.

- (a) At the completion of a project involving excavation the entity responsible for the excavation shall remove utility markings from all public sidewalks, pavements and other hard surfaces.

Section 2: This Amendment shall become effective upon its approval by Mayor and City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED, this ___ day of _____, 2019.

Approved:

Denis L. Shortal, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk

Office of City Attorney